

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Terry Edward McCall,)	C.A. No.: 2:13-cv-413-TLW-BHH
)	
Plaintiff,)	
)	
vs.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Sheriff Rick Clark, Director Drew Sisco,)	
and Doctor Hammond,)	
)	
Defendants.)	

The Plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On March 5, 2013, the undersigned issued the following order:

You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 835, Charleston, South Carolina 29402)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order**. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

(Dkt. No. 8 at 3 of 4.) It appears this order was returned to the Clerk of Court as undeliverable. (Dkt. No. 13.) However, on or about May 13, 2013, Plaintiff filed a Motion to Amend his Complaint. (Dkt. No. 17.) The address on that envelope was the same address provided in Plaintiff's Complaint. (See Dkt. No. 1; see also Dkt. No. 17.)

On June 7, 2013, Defendants filed a Motion to Dismiss. (Dkt. No. 23.) In that motion, Defendants seek dismissal for failure to prosecute, as Plaintiff failed to provide the court or defense counsel with an updated address. (See Dkt. No. 23.) By Order of this court filed June 11, 2013, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the Plaintiff

was advised of the dismissal procedure and the possible consequences if he failed to respond adequately. (Dkt. No. 24.) Despite this explanation, the Plaintiff did not respond.

Since Defendants' filed their Motion to Dismiss, several other pieces of mail to Plaintiff have been returned to the Clerk of Court as undeliverable. (Dkt. No. 26; Dkt. No. 27.) Plaintiff failed to provide the Clerk of Court with a proper address.

Based on the foregoing, it appears the Plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that Defendants' Motion to Dismiss (Dkt. No. 23) be GRANTED, and that this action be dismissed *with prejudice* for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce Howe Hendricks
United States Magistrate Judge

July 16, 2013
Charleston, South Carolina

The plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).